

FINAL REGULATORY FLEXIBILITY ANALYSIS

and

REGULATORY IMPACT REVIEW

for a

FINAL RULE

to

AMEND THE HMS REGULATIONS REGARDING THE RENEWAL OF

ATLANTIC TUNAS LONGLINE LIMITED ACCESS PERMITS (LAPs),

AND ATLANTIC SHARK DEALER WORKSHOP REQUIREMENTS

United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service

June 2008

Final Rule to: Amend the Regulations Regarding the Renewal of Atlantic Tunas Longline Limited Access Permits (LAPs), and Atlantic Shark Dealer Workshop Attendance Requirements

Actions: Allow for the renewal of Atlantic tunas longline LAPs that have been expired for more than one year, if the most recent permit holder of record has also been issued swordfish and shark LAPs and other requirements for permit renewal are met; and, modify Atlantic Shark Identification Workshop attendance requirements for businesses issued Atlantic shark dealer permits that have more than one dealer location listed on their permit.

Type of Statement: Final Regulatory Flexibility Analysis and Regulatory Impact Review (FRFA/RIR)

Lead Agency: National Marine Fisheries Service (NMFS)

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Abstract: This action removes the one-year renewal timeframe for Atlantic tunas longline LAPs. The most recent permit holder of record that either originally qualified for the Atlantic tunas longline LAP, or obtained the permit through transfer, and that has also been issued swordfish and shark LAPs, would be allowed to renew their Atlantic tunas longline LAP if it had been expired for more than one year. This action does not amend current regulations which specify that only persons holding non-expired swordfish and shark LAPs in the preceding year are eligible to renew those permits. Also, the requirement to possess swordfish and shark LAPs in order to obtain an Atlantic tunas longline LAP remains in effect.

This final action also modifies the Atlantic Shark Identification Workshop attendance requirements for businesses issued Atlantic shark dealer permits that have more than one dealer location listed on their permit. Upon permit renewal, a dealer must submit an Atlantic Shark Identification Workshop certificate (dealer or proxy) for each place of business which first receives Atlantic sharks by way of purchase, barter, or trade, rather than submitting a certificate for all locations listed on the dealer permit. Finally, this action requires that a copy of a valid workshop certificate be possessed in trucks or other conveyances serving as an extension of a dealer's business.

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1.0 STATEMENT OF NEED FOR ACTION, LEGAL BASIS, AND OBJECTIVES

1.1 Renewal of Atlantic Tunas Longline LAPs

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) specifies that NMFS shall provide a “reasonable opportunity” for U.S. vessels to harvest the quota allocation for species, such as swordfish and tunas, which are managed under an international agreement. Accordingly, This final rule implements a small change to domestic management measures, consistent with the Magnuson-Stevens Act, to help provide a reasonable opportunity for U.S. vessels to harvest quota allocations recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT). This action reinforces recent efforts by NMFS to “revitalize” the pelagic longline (PLL) fishery, in recognition of the nearly rebuilt stock status of North Atlantic swordfish ($B = 0.99B_{msy}$).

Since 1999, vessel owners have been required to simultaneously possess three limited access permits (Atlantic tunas longline; swordfish directed or incidental; and, shark directed or incidental) in order to retain Atlantic tunas with PLL gear, or to retain swordfish with any gear other than handgear. An Atlantic tunas longline limited access permit (LAP) is only considered valid, or useable, if the vessel has also been issued both a shark LAP and a swordfish LAP (other than handgear). Similarly, a swordfish LAP (other than handgear) is only considered valid, or useable, when a vessel has also been issued both a shark LAP and an Atlantic tunas longline LAP. The current regulations for each of these permits specify that only persons holding a non-expired LAP in the preceding year is eligible to renew that permit.

During the recent implementation of revised vessel upgrading restrictions for PLL vessels (72 FR 31688, June 7, 2007), NMFS identified a number of vessel owners that had allowed their Atlantic tunas longline LAPs to lapse for more than one year, although their accompanying swordfish and shark LAPs had been maintained through timely renewal. This may have been because of differences in the operational aspects and renewal procedures between swordfish and shark LAPs, and Atlantic tunas longline LAPs. The Atlantic tunas longline LAP renewal system was originally developed as a self-service, web-based electronic system that was administered by an off-site contractor for the primary purpose of issuing other open access permits. It was modified for the issuance of Atlantic tunas longline LAPs by requiring the applicant to either call a contracted customer service office (if there are no changes to the permit), or to call NMFS’ Northeast Regional HMS office (if there are changes to the permit). The information is then entered online by the contractor or by NMFS, and the permit is issued using the on-line website. In contrast, swordfish and shark LAPs are administered and renewed by submitting paper applications to NMFS’ Southeast Regional permit office. A significant difference between the two systems is that the Atlantic tunas longline LAP cannot be held in “no vessel” status. “No vessel” status allows a permit holder to retain a permit even if they no longer own a vessel. That is not the case with Atlantic tunas

longline LAPs which cannot be renewed without specifying a vessel. An Atlantic tunas longline permit holder must either move the Atlantic tunas longline LAP to a replacement vessel or forfeit the permit. Many vessel owners were not aware of these options, or were confused by them, and let their Atlantic tunas longline LAP permit expire because they no longer owned a vessel, even though they thought they remained eligible to renew the Atlantic tunas longline LAP.

Another difference between the Atlantic tunas longline LAP and swordfish and shark LAPs is that the tunas longline LAP does not have a unique permit number associated with it that stays unchanged through time, whereas swordfish and shark LAPs do. Rather, Atlantic tunas longline permit numbers remain directly associated with a vessel's Coast Guard documentation or state registration number. Because of this, "ownership" of the Atlantic tunas longline LAP has been more difficult to track over time because the actual permit number changes with each transfer of the Atlantic tunas longline LAP to another vessel.

The operational constraints, or differences, associated with the Atlantic tunas longline LAP permit system were not fully recognized until revised vessel upgrading regulations were recently implemented. Specifically, the historical practices that had been used to adapt the electronic web-based Atlantic tunas permit system to the HMS limited access permit regulations were found to be deficient when NMFS was determining, in September 2007, which permit holders were issued, or were eligible to renew, an Atlantic tunas longline LAP. The regulations governing the renewal of the Atlantic tunas longline LAP were found to have been administered differently than for swordfish and shark LAPs prior to September 2007 because of these operational constraints. Furthermore, based upon public comment and statements received at HMS Advisory Panel (AP) meetings and other hearings, NMFS became aware of continuing uncertainty in the fishing industry regarding the renewal, issuance, and eligibility for the Atlantic tunas longline LAP, and the applicability of the one-year renewal requirement. Because many vessel owners are no longer eligible to renew their Atlantic tunas longline LAP, there is now a situation where the number of available Atlantic tunas LAPs is insufficient to match the number of available swordfish and shark incidental or directed permits, thus rendering many swordfish permits invalid, or unuseable because all three permits are required to retain swordfish (other than with handgear).

This final action amends the highly migratory species (HMS) regulations to remove the one-year renewal timeframe for Atlantic tunas longline LAPs. This will allow the Agency to issue Atlantic tunas longline LAPs that have lapsed for more than one year to the most recent permit holder of record that either originally qualified for the Atlantic tunas longline LAP, or obtained the permit through transfer, provided that the permit holder has been issued a swordfish LAP (except handgear) and a shark LAP, and all other current requirements for permit renewal are met. This action does not amend the regulations which specify that only persons holding non-expired swordfish and shark LAPs in the preceding year are eligible to renew those permits. Also, the requirement to possess swordfish and shark LAPs in order to obtain an Atlantic tunas LAP remains in

effect. Therefore, this action will not increase the number of Atlantic tunas longline permit holders beyond those that currently possess, or are eligible to renew, both swordfish and shark LAPs.

This action will implement domestic management measures, consistent with the Magnuson-Stevens Act, to help provide a reasonable opportunity for U.S. vessels to harvest quota allocations recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT), in recognition of the nearly rebuilt stock status of North Atlantic swordfish ($B = 0.99B_{msy}$). It reinforces recent efforts by NMFS to “revitalize” the swordfish fishery by ensuring that an adequate number of HMS permit combinations are available for otherwise qualified Atlantic tunas longline permit holders to fish legally for swordfish and tunas with pelagic longline (PLL) gear. In doing so, this action could help the United States retain its historic swordfish quota allocation at ICCAT, as domestic swordfish landings have been well below that quota in recent years.

1.2 Atlantic Shark Identification Workshop Requirements

Current HMS regulations require that permitted Atlantic shark dealers attend an Atlantic Shark Identification Workshop and receive workshop certification. The objective of this requirement is to improve the identification and reporting of sharks by dealers to improve quota monitoring and stock assessments. If a dealer attends and successfully completes a workshop, the dealer will receive workshop certificates for each location listed on their Atlantic shark dealer permit. If the dealer sends a proxy, they must send a proxy for each location listed on the Atlantic shark dealer permit. Atlantic shark dealers may not renew their Atlantic shark dealer permit without submitting either a dealer or proxy certificate for each location listed on their Atlantic shark dealer permit. Additionally, Atlantic shark dealers may not act as the “first-receiver” of shark products at any location unless a valid workshop certificate is on the premises of each place of business listed on the shark dealer permit. As described in the final rule for Amendment 2 for the Management of Atlantic Shark Fisheries (June 24, 2008), “first-receiver” means any entity, person, or company that takes, for commercial purposes (other than solely for transport), immediate possession of the fish, or any part of the fish, as the fish are offloaded from a fishing vessel of the United States, as defined under § 600.10 of this chapter, whose owner or operator has been issued, or should be have been issued, a valid permit under this part.

NMFS has observed that some dealers may not be receiving shark products at all of the locations listed on their permit, thus making it unnecessary to require shark workshop certification for those locations. These dealers have multiple locations listed on their Atlantic shark dealer permit, including those where they may not receive shark products. For example, a dealer may purchase red snapper at one location, and shark at another location. However, the dealer’s shark permit lists both of these locations as owned by the dealer, including the snapper-only site, thus making it necessary for workshop certification at both the shark site and the snapper site. It is not currently feasible, for both technical and administrative reasons, to modify the NMFS permits

database to accommodate dealers who have different locations where they first receive different species.

To remedy this situation, NMFS is amending the HMS regulations to specify that, when applying for or renewing an Atlantic shark dealer permit, an applicant must submit an Atlantic Shark Identification Workshop certificate (dealer or proxy) for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, rather than for each location listed on their dealer permit. This action eliminates the need for a dealer to send a proxy to a workshop to obtain a certificate for a business location that does not first receive Atlantic shark products for the sole purpose of renewing their Atlantic shark dealer permit. The requirement to possess, and make available for inspection, an Atlantic Shark Identification Workshop certificate will similarly only be required at locations where sharks are first received. Additionally, NMFS is requiring that extensions of a dealer's business, such as trucks or other conveyances must possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit. This requirement will allow trucks or other conveyances to be immediately identified as extensions of a NMFS certified place of business which is eligible to first receive Atlantic sharks. With these minor amendments, the objective of improved identification and reporting of shark species is expected to continue, while the impact on dealers may be lessened.

2.0 ALTERNATIVES INCLUDING THE PROPOSED ACTIONS

This section briefly summarizes the alternatives that were considered.

2.1 Renewal of Atlantic Tunas Longline LAPs

2.1.1 No Action

Under this alternative, current federal HMS regulations regarding the renewal of expired Atlantic tunas longline LAPs would remain in effect. The current regulations at CFR 50 635.4(m)(2) specify that only persons holding a non-expired Atlantic tunas longline LAP in the preceding year are eligible to renew that permit.

2.1.2 Preferred Alternative - Allow for the Renewal of Atlantic Tunas Longline LAPs that Have Been Expired for More than One Year by the Most Recent Permit Holder of Record, Provided that their Associated Swordfish and Shark LAPs Have Been Maintained Through Timely Renewal and all other Requirements for Permit Renewal are Met.

Under this alternative, NMFS would remove the one-year renewal timeframe for Atlantic tunas longline LAPs. This would allow the Agency to issue Atlantic tunas longline LAPs to the most recent permit holder of record, even if the permit had not been renewed within one year of expiration, provided that the associated swordfish and shark

LAPs had been maintained through timely renewal and all other current requirements for permit renewal were met. The requirement to possess swordfish and shark LAPs in order to obtain an Atlantic tunas longline LAP would remain in effect. Also, current regulations would remain in effect which specify that only persons holding non-expired swordfish and shark LAPs in the preceding year are eligible to renew those permits.

2.2 Atlantic Shark Identification Workshop Requirements

2.2.1 No Action

Under this alternative, current federal HMS regulations regarding attendance at Atlantic Shark Identification Workshops would remain in effect. These regulations require that permitted Atlantic shark dealers attend an Atlantic Shark Identification Workshop and receive workshop certification. If a dealer attends and successfully completes a workshop, the dealer receives workshop certificates for each location listed on their Atlantic shark dealer permit. If the dealer sends a proxy, they must send a proxy for each location listed on the Atlantic shark dealer permit. Atlantic shark dealers may not renew their Atlantic shark dealer permit without submitting either a dealer or proxy certificate for each location listed on their Atlantic shark dealer permit. Additionally, Atlantic shark dealers may not receive shark product at a location that does not have a valid workshop certificate for that address on the premises.

2.2.2 Preferred Alternative – Require That, for Permit Renewal, an Atlantic Shark Dealer Must Submit an Atlantic Shark Identification Workshop Certificate (Dealer or Proxy) for Each Place of Business where Atlantic Sharks are First Received, and Require that Dealer’s Trucks and other Conveyances Possess a Copy of a Valid Workshop Certificate

This alternative would implement a minor change to the regulations to specify that, for permit renewal, a dealer must submit an Atlantic Shark Identification Workshop certificate (dealer or proxy) for each place of business where Atlantic sharks are first received by way of purchase, barter, or trade, rather than from each location listed on their dealer permit. The requirement to possess, and make available for inspection, an Atlantic Shark Identification Workshop certificate would similarly be required only at locations where sharks are first received. Additionally, this alternative would require extensions of a dealer’s business, such as trucks and other conveyances, to possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit. This requirement would allow trucks and other conveyances to be immediately identified as extensions of a NMFS-certified place of business which is eligible to first receive Atlantic sharks. This alternative would eliminate the need for a dealer to send a proxy to a workshop to obtain a certificate for a business location that does not receive Atlantic shark products for the sole purpose of renewing their Atlantic shark dealer permit. As with the no action alternative, Atlantic shark dealers could not first receive

shark product at a location that does not have a valid workshop certificate for that address on the premises.

3.0 DESCRIPTION OF AFFECTED INDUSTRIES

Detailed information about the operation of U.S. HMS fisheries can be found in the 2006 SAFE Report, which is included in the Final Consolidated HMS FMP (NMFS, 2006). The Final Consolidated HMS FMP, which is incorporated by reference, describes the operation and management of commercial fisheries for swordfish, tunas, and sharks (pelagic longline, handgear, and other gears), including international and domestic management measures, and permitting and reporting requirements.

3.1 Renewal of Atlantic Tunas Longline LAPs

There are six different HMS limited access permits: 1) directed swordfish; 2) incidental swordfish; 3) swordfish handgear; 4) directed shark; 5) incidental shark; and, 6) Atlantic tunas longline. Swordfish directed and incidental permits are valid only if the permit holder also holds both an Atlantic tunas longline LAP and a shark LAP. Similarly, the Atlantic tunas longline permit is valid only if the permit holder also holds both a limited access swordfish permit (directed or incidental, not handgear) and a shark LAP. Swordfish handgear and shark permits are valid without another HMS limited access permit.

As of August 6, 2007, a total of 1,190 HMS commercial limited access fishing permits were either issued to permit holders, or eligible to be renewed (197 directed swordfish, 91 incidental swordfish, 92 swordfish handgear, 243 directed shark, 299 incidental shark, and 268 tuna longline). In total, there are approximately 648 federal HMS limited access permit holders, as permit holders may be issued more than one permit. All of these permit holders are considered small business entities according to the Small Business Administration's standard for defining a small entity. The current regulations for each of these permits specify that only persons holding a non-expired LAP in the preceding year are eligible to renew that permit.

As of August 6, 2007, 245 vessels were authorized to fish with longline gear for swordfish and tunas (*i.e.*, the permit holder had been issued a tuna longline LAP and the appropriate swordfish and shark LAPs). Of these, 235 qualified for less restrictive vessel upgrading regulations as a result of the recent "swordfish revitalization" rule (72 FR 31688, June 7, 2007), because all three permits were issued to a vessel on the qualifying date of August 6, 2007 (*i.e.*, the permits were not in "no vessel" status). While NMFS was determining which vessels qualified for the less restrictive vessel upgrading regulations in 2007, it was discovered that approximately 40 vessels which originally qualified for the Atlantic tunas longline LAP (or their replacement vessel), and had also been issued (or were eligible to renew) swordfish and shark directed or incidental LAPs, are ineligible to renew their Atlantic tunas longline LAP because it had been expired for more than one year. Thus, the universe of entities most immediately affected by this

proposed action includes these 40 vessel owners that originally qualified for, or obtained through transfer, an Atlantic tunas longline LAP, but are no longer eligible to renew that permit because it has been expired for more than one year. These 40 vessels are no longer allowed to retain swordfish, or to fish for tunas with longline gear. Thirty-five of these vessels have also been issued directed or incidental swordfish and shark LAPs. Most of these vessels are equipped with pelagic longline gear, but several of the vessels are equipped to fish with squid trawls (*e.g.*, properly permitted squid trawl vessels may retain 15 incidentally-caught swordfish). Potentially, all 245 vessels issued Atlantic tunas LAPs, as well as swordfish and shark LAPs, could be affected by this action if, in the future, they fail to renew their Atlantic tunas longline LAP within one year of expiration.

Studies have indicated annual gross revenues of pelagic longline vessels ranging from \$136,267 (NMFS, 2000) to \$292,691 (Porter *et al.*, 2001) (2000 and 2001 dollars converted to 2007 dollars using the Consumer Price Index (CPI)). In 2004, NMFS estimated that the average pelagic longline vessel produced annual gross revenues of \$196,057 (2004 dollars converted to 2007 dollars using the CPI). In general, the average annual net return to a vessel is fairly low after all variable costs, including labor, are accounted for (Larkin *et al.* (2000) and Porter *et al.* (2001)). Ward & Hanson (1999) found that only 19 percent of the pelagic longline fleet earned \$62,227 or more annually, 50 percent of the fleet earns less than \$12,446 annually, and 20 percent of the fleet operates at a loss (1999 dollars converted to 2007 dollars using the CPI).

Limited information exists regarding the value of an Atlantic tunas longline LAP. There is an option to record the sales price on the back of a permit when transferring a permit, which some people have provided, so some information is available. Also, it is possible to obtain permit price information using the classified advertisements in industry trade publications, or during informal conversations with fishermen. Oftentimes, an Atlantic tunas longline LAP is sold or transferred as part of a 3-permit “package” which also includes a swordfish and shark LAP. The sales price for a 3-permit “package” varies, depending upon the size of the original baseline vessel and whether the swordfish and shark permits are directed or incidental. These 3-permit “packages” range in price from approximately \$7,500 to \$30,000 (B. McHale - pers. comm. (2008)). For the Atlantic tunas longline LAP itself, the sales price ranged from \$1,500 to \$8,500 before September 2007. In 2008, the sales price has ranged from \$5,000 - \$10,000 (B. McHale - pers. comm. (2008)). Similar to a 3-permit “package,” the price of an Atlantic tunas longline LAP by itself depends, in part, upon the size of the original baseline vessel.

3.2 Atlantic Shark Identification Workshop Requirements

Any person that first receives, purchases, trades for, or barter for Atlantic sharks from a fishing vessel of the United States must possess a valid Atlantic shark dealer permit. All permitted dealers must submit biweekly reports to NMFS documenting any and all sharks that they purchased or received. These biweekly dealer reports are used for quota monitoring, stock assessments, and other fishery management purposes. It is

important for these reports to be accurate. However, there are many different shark species, and proper identification can sometimes be difficult. For this reason, NMFS recently required that, as of December 31, 2007, all shark dealers (or proxies for each place of business listed on the dealer's permit) must be certified as having completed an Atlantic Shark Identification Workshop. An Atlantic shark dealer may not renew their shark dealer permit unless a workshop certificate for each place of business listed on the dealer permit has been submitted with the permit renewal application. If the dealer is not certified as having attended a workshop, the dealer must submit a copy of a proxy certificate for each place of business listed on the shark dealer permit.

As of May 2008, there were 142 individual Atlantic shark dealer permits issued by NMFS. Forty-one of these individual dealers had multiple locations listed on their permit (ranging from 2 to 8 locations). In total, as of May 2008, there were 242 locations listed on the 142 shark dealer permits that were issued. However, not all of the 242 locations may actually receive shark products. For example, a dealer may receive red snapper at one location and shark at another location. Because NMFS maintains only one list of locations for each dealer, the location receiving red snapper is listed on the shark dealer permit. In summary, the 41 individual shark dealers listing multiple locations on their shark dealer permit comprise the universe of entities potentially affected by this action. All of these permit holders are considered small business entities according to the Small Business Administration's standard for defining a small entity.

As of May 19, 2008, 84 shark dealers had been issued workshop certificates for at least one of their locations. NMFS identified 58 shark dealers that have not been issued any certificates for any locations. Finally, as May 19, 2008, approximately 8 of the 41 dealers with multiple locations listed on their permit have been issued at least one certificate for one, but not all, of the locations listed on their permit. These 8 Atlantic shark dealers who have not been issued certificates for all of their locations would be most immediately affected by the preferred alternative. Potentially, any of the 41 shark dealers with multiple locations listed on their permit could be impacted by the preferred alternative.

4.0 ECONOMIC ANALYSIS OF THE ALTERNATIVES

As described in Section 3.0, the preferred alternative for the renewal of Atlantic tunas longline LAPs would most immediately impact 35 – 40 vessels/owners that have been issued, or are eligible to renew, Atlantic swordfish and shark LAPs (except handgear), but are not currently eligible to renew their Atlantic tunas permit. The proposed action could also potentially impact any of the 245 vessels/owners that are currently authorized to fish with longline gear for swordfish and tunas if, in the future, these vessel owners/permit holders allow more than one year to lapse from the expiration date of their Atlantic tunas longline LAP to the submission of a renewal application.

As described in Section 3.0, the preferred alternative for Atlantic Shark Identification Workshop attendance requirements could potentially impact 41 individual

shark dealers listing multiple locations on their shark dealer permit. However, this alternative would most immediately impact the 8 shark dealers that currently have more than one location listed on their shark permit, but have not currently been issued certificates for all of these locations.

4.1 Renewal of Atlantic Tunas LAPs

No Action Alternative

The No Action alternative typically continues any existing economic impacts. Thus, there is usually no change in impacts associated with this alternative. However, the situation regarding the renewal of Atlantic tunas longline LAPs is unique. As described in Section 1.1, because of operational constraints, the regulations governing the renewal of Atlantic tunas longline LAPs were administered differently than for swordfish and shark LAPs until September 2007, after which they were administered consistently. Thus, the No Action alternative would continue any existing economic impacts, but those impacts have only been in existence since September 2007.

The No Action alternative (Alternative 2.1.1) has the largest associated potential adverse economic impacts. Without an Atlantic tunas longline LAP, a vessel operator is prohibited from fishing for tunas with longline gear and from retaining swordfish, even if the vessel has been issued a directed or incidental swordfish permit. Due to their high value, swordfish and tunas (yellowfin, bigeye, skipjack, and albacore) are the primary target species in the Atlantic HMS fishery. A U.S. pelagic longline vessel in the Atlantic Ocean is not able to participate in the PLL fishery without an Atlantic tunas longline LAP.

There is an important long-term adverse economic impact associated with the No Action alternative. The U.S. swordfish quota is derived from the recommendations of ICCAT, and is implemented under the authority of Atlantic Tunas Convention Act (ATCA). For the past several years, the United States has harvested only about 50 percent of its swordfish quota. Because so much unused domestic swordfish quota remains, ICCAT may reconsider the U.S. swordfish quota allocation and redistribute the remaining portion to other ICCAT contracting parties. If this were to occur, it would be extremely difficult to maintain the U.S. PLL fleet at historical levels. To compound this situation, the most recent stock assessment (2006) indicates that the swordfish stock is almost fully rebuilt ($B = 0.99B_{msy}$). Maintaining a viable, well-managed, and environmentally-sound domestic PLL fishery is important because it provides economic benefits across a wide range of sectors including commercial fishing, shipbuilding, food service, gear manufacturing, and others. Also, a viable domestic PLL fishery demonstrates to other nations that a well-managed fishery can also be profitable, thereby providing incentive for other nations to adopt similar management measures (such as circle hooks, careful release gears, and other management measures). Under the No Action alternative, the likelihood of retaining the U.S. swordfish quota and maintaining

the domestic swordfish and tuna PLL fishery is reduced. As many as 40 commercial fishing vessels that originally qualified to participate in the swordfish and tuna longline fishery, or obtained an Atlantic tunas longline LAP through transfer, would continue to be prohibited from participating in the fishery, harvesting the U.S. swordfish quota, and creating jobs.

Assuming that each PLL vessel produces annual gross revenues of \$196,057 ((NMFS, 2004) converted to 2007 dollars using the CPI), and the affected vessels are prevented from other income producing activities under the No Action alternative, resultant losses to the overall economy of as much as \$7,842,280 (\$196,057 x 40 vessels) would continue to occur under this alternative. Also, based upon information provided by Ward & Hanson (1999), an overall fleet-wide decrease in net revenues (profits) of approximately \$721,839 would continue to occur, assuming that 19 percent of the fleet earns more than \$62,227 annually, 50 percent of the fleet earns less than \$12,446 annually, and 20 percent of the fleet operates at a loss (1999 dollars converted to 2007 dollars using the CPI). Under this alternative, each individual vessel owner affected by this alternative would continue to lose from \$0 to over \$100,000 in net revenues annually, depending upon the profitability of their business.

As discussed in Chapter 3.1, limited information exists regarding the value of an Atlantic tunas longline LAP. However, based upon the best information available, in 2008 the value has ranged from \$5,000 - \$10,000 (B. McHale - pers. comm. (2008)). Using a range of \$5,000 - \$10,000 per Atlantic tunas longline LAP, the no action alternative would continue to produce a total fleet-wide net revenue decrease ranging from \$200,000 - \$400,000 distributed among the 40 impacted vessels.

A related impact associated with the No Action alternative is that it may have the effect of increasing the value of an Atlantic tunas longline LAP, because it restricts the available supply of these permits over time. This impact could be either positive or negative for small business entities, depending upon whether the permit is being bought or sold.

Preferred Alternative

Preferred Alternative 2.1.2 would potentially provide economic benefits to the 35 – 40 most recent permit holders of record that had been issued, or were eligible to renew, Atlantic swordfish and shark LAPs (except handgear), but are currently ineligible to renew Atlantic tunas longline LAPs because the permit has been expired for more than one year. As mentioned above, without an Atlantic tunas longline LAP, a domestic PLL vessel in the Atlantic Ocean is not able to participate in the PLL fishery.

There are currently 235 – 245 commercial fishing vessels that are authorized to fish for Atlantic swordfish and tunas with PLL gear. Potentially, there could be about 300 PLL vessels, based upon the existing number of incidental and directed swordfish permits (note - the large number of shark permits (542) is not a limiting factor). However, the number of PLL vessels is restricted by the amount of renewable Atlantic

tunas longline LAPs (about 268). Preferred Alternative 2.1.2 would help to alleviate this restriction by allowing the number of Atlantic tunas longline permits to more closely match the number of available swordfish/shark permit combinations. This alternative would limit the potential number of PLL vessels to the total amount of directed and incidental swordfish permits (which have also been issued shark LAPs), rather than to the number of Atlantic tunas longline LAPs.

An ancillary economic benefit associated with Preferred Alternative 2.1.2 is that it could potentially help to maintain the domestic swordfish and tuna PLL fishery by allowing 35 – 40 permits that were originally issued in 1999, but were not renewed after September 2007, to be reissued. As discussed above, it is important to maintain the U.S. swordfish fishery, because the stock is almost fully rebuilt and the United States has recently been harvesting only about 50 percent of its ICCAT-recommended quota. All of the potentially affected vessels/permit holders originally qualified for the longline fishery in 1999, or received the necessary permits through transfer. Thus, relative to August 2007 and years prior, there would be no change in historical fishing practices, fishing effort, or economic impacts. However, relative to September 2007 and beyond, positive economic benefits to affected permit holders would result. If adopted, the proposed action could help the United States retain its historic swordfish quota allocation at ICCAT and sustain employment opportunities by maintaining the PLL fleet at levels that existed before September 2007, relative to the no action alternative. Maintaining a viable domestic PLL fishery is important, because it helps to demonstrate to other nations that a well-managed, environmentally-sound fishery can also be profitable. This could eventually provide an incentive for other nations to adopt similar management measures that are currently required of the U.S. PLL fleet such as circle hooks, careful release gears, and others.

Assuming that each pelagic longline vessel produces annual gross revenues of \$196,057 (NMFS, 2004) converted to 2007 dollars using the CPI, and the affected vessels are prevented from other income producing activities under the No Action alternative, overall gross economic benefits could potentially increase as much as \$7,842,280 ($\$196,057 \times 40$ vessels) under this alternative. Based upon information provided by Ward & Hanson (1999), an overall fleet-wide increase in net revenues (profits) of approximately \$721,839 could occur, assuming that 19 percent of the fleet earns more than \$62,227 annually, 50 percent of the fleet earns less than \$12,446 annually, and 20 percent of the fleet operates at a loss (1999 dollars converted to 2007 dollars using the CPI). Under this alternative, each individual vessel owner/permit holder could see an increase in annual net revenues ranging from \$0 to potentially over \$100,000, depending upon the profitability of their business.

As discussed in Chapter 3.1, limited information exists regarding the value of an Atlantic tunas longline LAP. However, based upon the best information available, in 2008 the value has ranged from \$5,000 - \$10,000 (B. McHale - pers. comm. (2008)). Using a range of \$5,000 - \$10,000 per Atlantic tunas longline LAP, a total fleet-wide net

revenue increase ranging from \$200,000 - \$400,000 could occur distributed among the 40 vessels potentially impacted by Preferred Alternative 2.1.2.

A related potential impact associated with the preferred alternative is that it may have the effect of reducing the value of an Atlantic tunas longline LAP, because it increases the available supply of these permits. This impact could be either positive or negative, depending upon whether the permit is being bought or sold.

4.2 Atlantic Shark Identification Workshop Requirements

No Action Alternative

Under the No Action alternative (Alternative 2.2.1), there would be no change in existing impacts. All dealers intending to renew their Atlantic shark dealer permit would continue to be required to become certified at an Atlantic Shark Identification Workshop. Dealers with multiple locations would receive certificates for each location listed on their permit. Dealers opting not to become certified and to send a proxy would continue to be required to send a proxy for each location listed on their Atlantic shark dealer permit. Atlantic shark dealers could not renew their permit without submitting either a dealer or proxy certificate for each location listed on their Atlantic shark dealer permit. Additionally, Atlantic shark dealers could not receive shark products unless a valid workshop certificate is on the premises of each place of business listed on the shark dealer permit.

There are approximately 56 Atlantic shark dealers with more than one location listed on their permit. These dealers have a choice of becoming certified themselves, or sending a proxy to the workshops for each location listed on their shark dealer permit. As described in the Consolidated HMS FMP (NMFS, 2006), on an individual basis the costs incurred by dealers and/or proxies would be those related to travel and the time required to attend the workshops, resulting in out of pocket expenses and lost opportunity costs. Travel costs to attend these workshops vary, depending upon the distance that must be travelled. Daily opportunity costs for dealers are currently unknown. Therefore, it is not possible to precisely quantify the costs associated with the No Action alternative. NMFS has attempted to reduce costs by offering workshops at a variety of locations near high concentrations of dealers, according to the addresses listed on the permits. At a minimum, the costs for a dealer attending a workshop include travel expenses and at least one day of lost opportunity costs. At a maximum, for dealers opting to send proxies for each location listed on their permit, the costs could include travel expenses for several proxies and several days of lost opportunity costs.

Preferred Alternative

Preferred Alternative 2.2.2 would specify that, upon permit renewal, a dealer must submit an Atlantic Shark Identification Workshop certificate (dealer or proxy) for each place of business listed on their dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, rather than from each location listed on their dealer permit. The requirement to display an Atlantic Shark Identification Workshop certificate would similarly be required only at all locations where sharks are first received. This would

eliminate the need for a dealer to send a proxy to a workshop to obtain a certificate for a business location that does not receive Atlantic shark products for the sole purpose of renewing their Atlantic shark dealer permit. Additionally, the preferred alternative would require extensions of a dealer's business, such as trucks and other conveyances, to possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit.

There are approximately 41 Atlantic shark dealers with more than one location listed on their permit. Under Preferred Alternative 2.2.2, these dealers would have the choice of becoming certified themselves, or sending a proxy to the workshops for each location where Atlantic sharks are first received by way of purchase, barter, or trade. Similar to the No Action alternative, on an individual basis the costs incurred by dealers and/or proxies would be those related to travel and the time required to attend the workshops, resulting in out of pocket expenses and lost opportunity costs. Travel costs to attend these workshops vary, depending upon the distance that must be travelled. Daily opportunity costs for dealers are not currently known. Therefore, it is not possible to precisely quantify the cost savings associated with Preferred Alternative 2.2.2. NMFS has attempted to reduce costs by offering workshops at a variety of locations near high concentrations of dealers, according to the addresses listed on the permits. At a minimum, the costs for a dealer attending a workshop include travel expenses and at least one day of lost opportunity costs. At a maximum, for dealers opting to send proxies for each location that receives Atlantic shark products, the costs could include travel expenses for several proxies and several days of lost opportunity costs.

NMFS anticipates that the total costs (travel costs and opportunity costs) associated with Preferred Alternative 2.2.2 would be lower than those associated with the No Action alternative, but only for those Atlantic shark dealers that: (1) opt to send a proxy (or proxies) to the workshop; (2) have multiple locations listed on their permit; and, (3) only receive shark products at some of the locations listed on their Atlantic shark dealer permit. Costs would remain unchanged for shark dealers that do not meet these three criteria. For dealers that meet these criteria, costs would be reduced by the amount equivalent to sending proxies for each location listed on the permit that do not receive shark products. For example, if a dealer chooses to send proxies and has four locations listed on the permit, but only two of those locations actually receive shark products, the costs to the dealer would be reduced by the amount equivalent to sending two proxies to an Atlantic Shark Identification Workshop.

The costs associated with requiring extensions of a dealer's business, such as trucks and other conveyances, to possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit are expected to be minimal.

5.0 REGULATORY IMPACT REVIEW

5.1 Description of the Management Objectives

Please see Chapter 1 for a description of the management objectives associated with the proposed management measures.

5.2 Description of the Fishery

Please see Chapter 3 for a description of the fisheries that could be affected by this rulemaking.

5.3 Statement of the Problem

Please see Chapter 1 for a statement of the problem and the need for these management actions.

5.4 Description of Each Alternative

Please see Chapter 2 for a summary of each alternative.

5.5 Economic Analysis of Expected Effects of Each Alternative Relative to the Baseline

NMFS does not anticipate that national net benefits or costs will change significantly in the long run as a result of implementing the preferred alternatives, relative to the No Action baseline. The actions in this document address the renewal of Atlantic tunas longline LAPs that have been expired for more than one year (Issue 1), and attendance requirements for shark dealers at Atlantic Shark Identification Workshops (Issue 2).

Relative to No Action Alternative 2.1.1, removing the one-year renewal timeframe for Atlantic tunas LAPs under Preferred Alternative 2.1.2 is projected to increase net and gross revenues for approximately 40 vessel owners who are otherwise qualified to fish for swordfish and tunas with longline gear, except that they are currently ineligible to renew their Atlantic tunas longline LAP. Assuming that each PLL vessel produces annual gross revenues of \$196,057 (2004 dollars converted to 2007 dollars using the CPI (NMFS, 2004)), overall gross economic benefits could increase as much as \$7,842,280 (\$196,057 x 40 vessels) under this alternative, relative to the baseline. Based upon information provided by Ward & Hanson (1999) regarding PLL vessel profits, an overall fleet-wide increase in net revenues (profits) of approximately \$721,839 (1999 dollars converted to 2007 dollars using the CPI) could occur. Alternatively, using the sales price of a permit as its long term value to a potential buyer, a range of \$5,000 - \$10,000 per Atlantic tunas longline LAP could produce a total fleet-wide net revenue increase ranging from \$200,000 - \$400,000 distributed among the 40 vessels potentially impacted by Preferred Alternative 2.1.2.

Relative to No Action Alternative 2.2.1, the preferred alternative for Atlantic Shark Identification Workshop attendance requirements is projected to relieve a restriction and reduce compliance costs for shark dealers under certain circumstances.

NMFS is proposing to specify that, upon permit renewal, a dealer must submit a valid workshop certificate (dealer or proxy) for each place of business where Atlantic sharks are received, rather than from each location listed on their dealer permit. The requirement to display an Atlantic Shark Identification Workshop certificate would similarly be required only at all locations where sharks are first received. For dealers that opt to send a proxy (or proxies), this eliminates the need to send a proxy to a workshop to obtain a certificate for a business location that does not receive Atlantic shark products for the sole purpose of renewing their Atlantic shark dealer permit. Relative to the No Action alternative, the cost savings associated with Preferred Alternative 2.2.2 would vary, primarily depending upon the number of locations listed on a shark dealer's permit that do not receive shark products, and also depending upon travel costs for attending the workshop, and lost opportunity costs associated with proxies missing time from work. For example, if a dealer chooses to send proxies and has four locations listed on the permit, but only two of those locations actually receive shark products, the costs to the dealer would be reduced by the amount equivalent to sending two proxies to an Atlantic Shark Identification Workshop.

5.6 Summary

Table 1 provides a summary of these, and other, net economic benefits and costs associated with each alternative.

Table 1. Net Economic Benefits and Costs for each Alternative
Renewal of Atlantic Tunas Longline LAPs

Alternative	Net Economic Benefits	Net Economic Costs
Alternative 2.1.1 (No Action)	<p><i>Long-term:</i> If 40 vessels are not able to fish, potential increase in future swordfish & tuna landings (if a domestic fishing infrastructure exists).</p> <p><i>Short-term:</i> Potential impact on value of Atlantic tunas longline LAPs.</p>	<p><i>Long-term:</i> Potential loss of U.S. swordfish quota, jobs, PLL fleet capacity, & domestic fishing infrastructure.</p> <p><i>Short-term:</i> Continued net annual economic losses of \$200,000 - \$721,839 among 40 vessels. Potential impact on value of Atlantic tunas longline LAPs.</p>
Alternative 2.1.2 (Allow for Renewal of Atlantic Tunas Longline LAPs That Have Been Expired for More Than One Year)	<p><i>Long-term:</i> Potential increase in PLL landings, employment, & PLL fleet capacity. Could help maintain U.S. swordfish quota and domestic fishing infrastructure.</p>	<p><i>Long-term:</i> Potential impact on future swordfish & tuna revenues from landings if overfishing occurs.</p> <p><i>Short-term:</i> Potential impact on value of Atlantic tunas</p>

	<i>Short-term:</i> Potential net annual economic benefits of \$200,000 – \$721,839 distributed among 40 vessels. Potential impact on value of Atlantic tunas longline LAPs.	longline LAPs.
Atlantic Shark Identification Workshop Requirements		
Alternative	Net Economic Benefits	Net Economic Costs
Alternative 2.2.1 (No Action)	<i>Long-term:</i> None. No change. <i>Short-term:</i> None. No change.	<i>Long-term:</i> Continued travel costs & opportunity costs for proxies to attend workshops. <i>Short-term:</i> Travel & opportunity costs for proxies to attend workshops.
Alternative 2.2.2 (Workshop Certificates Required Only for Locations that Actually Receive Sharks)	<i>Long-term:</i> Potentially lower travel costs and opportunity costs for dealers with multiple locations (some of which do not receive sharks) by sending fewer proxies to workshops. <i>Short-term:</i> Potentially lower travel costs and opportunity costs for dealers with multiple locations (some of which do not receive sharks) by sending fewer proxies to workshops.	<i>Long-term:</i> None. <i>Short-term:</i> None.

Under E.O. 12866, a regulation is a “significant regulatory action” if it is likely to: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or, (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. The preferred alternatives described in this document do not meet the above criteria. Therefore, under E.O. 12866, the preferred alternatives described in this document have been determined to be not significant for the purposes of E.O. 12866. A summary of the expected net

economic benefits and costs of each alternative, which are based on the supporting text in Chapters 3 and 4, can be found above in Table 1.

6.0 FINAL REGULATORY FLEXIBILITY ANALYSIS

This Final Regulatory Flexibility Analysis (FRFA) is conducted to comply with the Regulatory Flexibility Act (5 USC 604 et. seq.) and provides a description of the economic impacts of the various alternatives on small entities.

6.1 Description of the Reasons Why the Action is Being Considered

Please see Chapter 1 for a description of the objectives, need, and legal basis for this action.

6.2 Statement of the Objectives of, and Legal Basis for, the Final Rule

Please see Chapter 1 for a description of the objectives, need, and legal basis for this action.

6.3 Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, Summary of the Assessment of NMFS to Such Issues, and Statement of Changes Made to Proposed Rule as a Result of Such Comments

NMFS received several comments on the proposed rule during the public comment period. A summary of the comments and the Agency's responses are included in preamble of the final rule and in Appendix 1. NMFS did not receive any comments specific to the IRFA, but did receive a limited number of comments related to economic issues and concerns. These comments are responded to with the other comments (see Comments 11, 16, and 17 in Appendix 1). The comments on economic concerns are also summarized here.

A comment was received indicating that the preferred alternative for the renewal of Atlantic tunas longline LAPs would allow some *Illex* squid trawlers to renew their Atlantic tunas longline permit again, thus making their incidental swordfish permit valid. This would allow them to retain incidentally-caught swordfish and provide a significant economic benefit to their business. NMFS concurs with this assessment that the final action could provide an economic benefit to some former permit holders, and reduce or eliminate swordfish regulatory discards by allowing squid trawlers to retain incidentally-caught swordfish.

Another commenter stated that the preferred alternative would allow people who did not follow the regulations regarding permit renewal to obtain a new Atlantic tunas longline LAP, whereas some fishermen had to pay money to buy the permit. In response, NMFS stated that the intent of the final rule is to help ensure that the number of available Atlantic tunas longline LAPs is sufficient to match the number of available swordfish and

shark LAPs. Furthermore, all of the individuals affected by this rule either originally qualified for an Atlantic tunas longline LAP, or obtained it through transfer. NMFS will not be issuing new permits to everyone who submits an application. The Atlantic tunas longline LAP remains limited access. Unless a person is the most recent Atlantic tunas longline permit holder of record, the permit can only be obtained through transfer.

Finally, NMFS received a comment stating that the preferred alternative provides an opportunity for individuals to sell their newly reissued Atlantic tunas longline LAP for their own economic benefit, possibly to south Florida vessel owners that want to fish with buoy gear. In response, NMFS believes it would be beneficial for achieving the domestic north Atlantic swordfish quota if some people who want to fish for swordfish are able to do so legally. Some of the transferred permits could be used to participate in the buoy gear fishery in south Florida. NMFS will continue to monitor the fishery to determine if additional regulations are needed.

No changes to the final rule were made as a result of these comments.

6.4 Description and Estimate of the Number of Small Entities to Which the Final Rule Would Apply

NMFS considers all HMS commercial permit holders (including dealers) to be small entities because they either had gross receipts less than \$3.5 million for fish-harvesting, gross receipts less than \$6.0 million for charter/headboats, or 100 or fewer employees for wholesale dealers. These are the SBA size standards for defining a small versus large business entity in this industry. A description of the affected fisheries, the categories, and the number of permit holders can be found in Chapter 3.

6.5 Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule, Including an Estimate of the Classes of Small Entities Which Would Be Subject to the Requirements of the Report or Record

None of the alternatives considered for this final rule would result in additional reporting, recordkeeping, and compliance requirements that would require new Paperwork Reduction Act filings. Atlantic shark dealers will need to comply with a new requirement to possess a copy of their Atlantic Shark Identification Workshop certificate (dealer or proxy) in their trucks or other conveyances which serve as extensions of a dealer's place of business. This will help to facilitate the identification of trucks and conveyances as extensions of a NMFS-certified place of business which is eligible to receive Atlantic sharks.

6.6 Identification of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict with the Final Rule

Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. NMFS strives to ensure consistency among the regulations with Fishery Management Councils and other relevant agencies. NMFS does not believe that the final regulations would conflict with any relevant regulations, federal or otherwise.

6.7 Description of the Steps that NMFS has taken to Minimize the Significant Adverse Economic Impact on Small Entities, Consistent with the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and the Reason that Each One of the Other Significant Alternatives to the Rule was Rejected

The Regulatory Flexibility Act (5 U.S.C. § 603 (c) (1)-(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and,
4. Exemptions from coverage of the rule for small entities.

As noted earlier, NMFS considers all commercial permit holders to be small entities. In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act, ATCA, and the ESA, NMFS cannot exempt small entities or change the compliance requirements only for small entities. Thus, there are no alternatives that fall under the first and fourth categories described above.

With regards to category two, none of the alternatives considered would result in additional reporting requirements. The selected alternative for Atlantic Shark Identification Workshops requires shark dealers to possess a copy of their workshop certificate (dealer or proxy) in trucks or other conveyances which serve as extensions of a dealer's place of business. The only compliance requirement involves making a photocopy of the workshop certificate, and possessing that copy inside dealer's trucks or conveyances. This requirement will facilitate the identification of vehicles which serve as extensions of a NMFS-certified place of business that is eligible to receive Atlantic sharks.

Category three emphasizes the use of performance standards rather than design standards in the development of alternatives. None of the alternatives require compliance with standards, so there are no alternatives that fall under this category.

NMFS considered two alternatives to address the renewal of Atlantic tunas longline LAPs that have been expired for more than one year, and two alternatives to address Atlantic Shark Identification Workshop attendance requirements. As described below, NMFS has provided justification for the selection of the preferred alternatives to achieve the desired objectives.

Alternative 1 for the renewal of Atlantic tunas longline LAPs (alternative 2.1.1 in the FRFA) is the no action, or status quo, alternative. Current HMS regulations at 50 CFR 635.4(m)(2) specify that only persons holding a non-expired Atlantic tunas longline LAP in the preceding year are eligible to renew that permit. Under alternative 1, there would be no change in the existing regulations and, as such, no change in the current baseline economic impacts.

The no action alternative was not selected because it has the largest associated adverse economic impacts. Without an Atlantic tunas longline LAP, a permit holder is prohibited from fishing for tunas with PLL gear and from retaining swordfish, even if the vessel has been issued a directed or incidental swordfish permit. As many as 40 commercial fishing vessels that previously qualified for LAPs to participate in the PLL fishery would continue to be prohibited from participating in the fishery, harvesting the U.S. swordfish quota, and creating jobs. Thus, a failure to take action would prevent the realization of economic gains associated with increased swordfish fishing.

Under the selected alternative (preferred alternative 2.1.2 in the FRFA), NMFS would remove the one-year renewal timeframe for Atlantic tunas longline LAPs. This would allow the Agency to reissue this permit to the most recent permit holder of record, even if the Atlantic tunas longline LAP had not been renewed within one year of expiration, provided that they were issued swordfish and shark LAPs and all other requirements for permit renewal were met. The requirement to possess swordfish and shark LAPs in order to obtain an Atlantic tunas longline LAP would remain in effect. Also, current regulations which specify that only persons holding non-expired swordfish and shark LAPs in the preceding year are eligible to renew those permits would remain in effect.

Relative to the no action alternative, removing the one-year renewal timeframe for Atlantic tunas longline LAPs is projected to potentially increase net and gross revenues for approximately 40 vessel owners who are otherwise qualified to fish for swordfish and tunas with PLL gear, except that they are currently ineligible to renew their Atlantic tunas longline LAP. Overall fleet-wide gross economic benefits could potentially increase as much as \$7,842,280 under this alternative, relative to the baseline. Also, an overall fleet-wide increase in net revenues (profits) of approximately \$200,000 to \$721,839 could occur, distributed among the 40 vessels potentially impacted by this alternative. Under this alternative, each individual vessel owner could see an increase in annual net revenues ranging from \$0 to potentially over \$100,000, depending upon the profitability of their business.

Another important benefit associated with the selected alternative is that it could help to maintain the domestic swordfish and tuna PLL fishery at historical levels by allowing 35 ■ 40 vessels to participate in the fishery that, since September 2007, have not been permitted to do so. All of the potentially affected vessels/permit holders originally qualified for the longline fishery in 1999, or received the necessary permits through

transfer. Thus, relative to August 2007 and years prior, there would be no change in historical fishing practices, fishing effort, or economic impact. However, relative to September 2007 and beyond, potential economic benefits to the affected permit holders would result. The selected alternative could also help the United States retain its historic swordfish quota allocation at ICCAT and sustain employment opportunities in the domestic PLL fleet. Maintaining a viable domestic PLL fishery is important because it could help to demonstrate that a well-managed, environmentally-sound fishery can also be profitable. This could eventually provide an incentive for other nations to adopt similar management measures that are currently required of the U.S. PLL fleet such as circle hooks, careful release gears, and other measures.

A related potential impact associated with both alternatives is that changes to the value of an Atlantic tunas longline LAP could occur by changing the supply of available permits. The no action alternative would likely reduce the supply of available permits over time, thereby increasing the value of the permit. The selected alternative could initially increase the supply relative to the period since September 2007, and thereby reduce the value. These impacts would be either positive or negative for small business entities, depending upon whether the Atlantic tunas longline LAP was being bought or sold.

There are no other significant alternatives for the renewal of Atlantic tunas longline permit, except for the two aforementioned alternatives. The selected alternative achieves the objectives of this rulemaking, provides benefits to small entities, and has few associated impacts because the regulatory changes will be more representative of the actual operational capabilities of the Atlantic tunas longline LAP renewal system. The selected alternative will help to ensure that an adequate number of Atlantic tunas longline LAPs are available to match the available number of swordfish and shark LAPs, which is important because all three permits are needed to retain swordfish (other than with the swordfish handgear LAP) and to fish for tunas with PLL gear.

Alternative 1 for attendance requirements at Atlantic Shark Identification Workshops (alternative 2.2.1 in the FRFA) is the no action alternative. All dealers intending to renew their Atlantic shark dealer permit would continue to be required to become certified at an Atlantic Shark Identification Workshop, or to have their proxies certified. Dealers with multiple locations listed on their permit would receive certificates for each location listed on their permit. Dealers opting not to become certified and to send a proxy would continue be required to send a proxy for each location listed on their Atlantic shark dealer permit. Atlantic shark dealers would not be allowed to renew their permit without submitting either a dealer or proxy certificate for each location listed on their Atlantic shark dealer permit. Additionally, Atlantic shark dealers could not receive shark products at a location that does not have a valid workshop certificate for that address on the premises.

There are approximately 41 Atlantic shark dealers with more than one location listed on their permit. These dealers have the choice of becoming certified themselves, or

sending a proxy to the workshops for each location listed on a permit. As described in the Consolidated HMS FMP and its final rule (71 FR 58058, October 2, 2006), on an individual basis the costs incurred by dealers and/or proxies are those related to travel and the time required to attend the workshops, which result in out of pocket expenses and lost opportunity costs. Travel costs to attend these workshops vary, depending upon the distance that must be traveled. Daily opportunity costs for dealers are not currently known. Therefore, it is not possible to precisely quantify the costs associated with the no action alternative. At a minimum, the costs for a dealer attending a workshop include travel expenses and at least one day of lost opportunity costs. At a maximum, for dealers opting to send proxies for each location listed on their permit, the costs could include travel expenses for several proxies and several days of lost opportunity costs.

The selected alternative for Atlantic Shark Identification Workshop attendance requirements (preferred alternative 2.2.2 in the FRFA) specifies that, upon permit renewal, a dealer must submit an Atlantic Shark Identification Workshop certificate (dealer or proxy) for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, rather than from each location listed on their dealer permit. The requirement to display an Atlantic Shark Identification Workshop certificate is similarly only required at locations listed on the dealer permit where sharks are first received. This eliminates the need for a dealer to send a proxy to a workshop to obtain a certificate for a business location that does not first receive Atlantic shark products.

As mentioned above, there are approximately 41 shark dealers with multiple locations listed on their permit which could be impacted by the proposed action. Of these, 8 Atlantic shark dealers have not currently been issued Atlantic Shark Identification Workshop certificates for all of the locations listed on their permit.

NMFS estimates that the total costs (travel costs and opportunity costs) associated with the selected alternative for Atlantic Shark Identification Workshop attendance requirements will be lower than those associated with the no action alternative, but only for Atlantic shark dealers that: (1) opt to send a proxy (or proxies) to the workshop; (2) have multiple locations listed on their permit; and, (3) only first receive shark products at some of the locations listed on their Atlantic shark dealer permit. Costs will remain unchanged for shark dealers that do not meet these three criteria. For dealers that meet these criteria, the costs will be reduced by an amount equivalent to sending proxies for each location listed on the permit that do not first receive shark products. For example, if a dealer chooses to send proxies and has four locations listed on the permit, but only two of those locations first receive shark products, the costs would be reduced by the amount equivalent to sending two proxies to an Atlantic Shark Identification Workshop.

The selected alternative also requires that extensions of a dealer's business, such as trucks and other conveyances, must possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit. This requirement allows trucks and other conveyances to be immediately identified as extensions of a

NMFS-certified place of business which is eligible to receive Atlantic sharks. NMFS anticipates that this requirement will have minimal costs but will improve the enforceability of existing Atlantic shark regulations. There are no other significant alternatives for Atlantic Shark Identification Workshop attendance requirements except for these two alternatives. Administratively it is not currently feasible, for both technical and programmatic reasons, to modify the NMFS permits database to accommodate dealers having different locations where they receive different species. The selected alternative requires dealers to display an Atlantic Shark Identification Workshop certificate at all locations where sharks are first received. Therefore, it achieves the objective of improving the identification and reporting of shark species, while simultaneously lessening impacts on dealers. The selected alternative will also improve the enforceability of existing Atlantic shark regulations by requiring extensions of a dealer's business, such as trucks and other conveyances, to possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit.

7.0 REFERENCES

- Larkin, S.L., C.M. Adams, and D.J. Lee, 2000. Reported trip costs, gross revenues, and net returns for U.S. Atlantic pelagic longline vessels. *Marine Fisheries Review* 62(2): 49 – 60.
- Porter, R.M., M. Wendt, M.D. Travis, and I. Strand. 2001. Cost-earnings study of the Atlantic-based U.S. pelagic longline fleet. Pelagic Fisheries Research Program. SOEST 01-02; JIMAR contribution 01-337. 102 pp.
- NMFS. 2000. Regulatory Amendment 1 to the Atlantic Tunas, Swordfish and Sharks Fishery Management Plan. National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Highly Migratory Species Management Division, Silver Spring, MD. Public Document.
- NMFS. 2004. Final Supplemental Environmental Impact Statement for Final Rule for Reduction of Sea Turtle Bycatch and Bycatch Mortality in the Atlantic Pelagic Longline Fishery. National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Highly Migratory Species Management Division, Silver Spring, MD. Public Document.
- NMFS. 2006. Final Consolidated Atlantic Highly Migratory Species Fishery Management Plan. National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Highly Migratory Species Management Division, Silver Spring, MD. Public Document.
- Ward, J. and E. Hanson. 1999. The regulatory flexibility act and HMS management data needs. Presentation at the American Fisheries Society Annual Meeting. Charlotte, North Carolina.

APPENDIX 1 – Comments & Responses

The public comment period for the proposed rule (73 FR 19795, April 11, 2008) was open from April 11, 2008, to May 12, 2008. During that time, NMFS conducted three public hearings in Gloucester, MA (May 1, 2008), St. Petersburg, FL (May 6, 2008), and Silver Spring, MD (May 7, 2008). In addition, the HMS Advisory Panel (HMS AP) received a presentation and was provided with an opportunity to comment on the proposed rule on April 16, 2008. The Agency received six written or electronic comment letters, and several verbal comments from the HMS AP and at public hearings.

A summary of the major comments (26 total) received, along with NMFS' response, is provided below. These comments and responses are divided into two major categories: those that discuss the renewal of Atlantic tunas longline LAPs (23 comments) and those that discuss Atlantic shark dealer workshop requirements (3 comments).

Renewal of Atlantic Tunas Longline LAPs

Comment 1: All longlines should be banned. It is time for NMFS to prohibit these forty mile longlines from being used in the ocean and killing everything in their path. The proposed rule is far too lenient.

Response: The U.S. PLL fishery provides jobs and income for fishery participants and wholesome food products for consumers. NMFS continually assesses the PLL fishery and, if necessary, implements management measures to ensure that bycatch and bycatch mortality of protected and nontarget species are minimized to the extent practicable. In addition, based upon the best scientific information available, the agency develops and implements management measures to prevent overfishing and rebuild overfished stocks. Some of these management measures include the mandatory use of circle hooks in the PLL fishery, bait restrictions, gear requirements, mandatory training at release and disentanglement workshops, mandatory release and disentanglement gear, time/area closures, mandatory vessel monitoring systems, logbook and reporting requirements, observer coverage, minimum size limits, catch limits, annual quotas, target catch requirements, limited access permits, and vessel upgrading restrictions. The implementation of these measures has resulted in a well-managed domestic fishery. This final rule is not expected to have significant adverse environmental impacts because the resultant number of authorized PLL vessels will not exceed the number of vessels that are currently issued, or are eligible to renew, swordfish directed and incidental permits. At most 40 Atlantic tunas longline LAP could be reissued as a result of this rule, but all of these permits have been issued before, since LAPs were first required in 1999.

Comment 2: The Atlantic tunas longline LAP was established eight or nine years ago. Why is NMFS only finding out now that 40 former permit holders did not renew their permits by the required deadline?

Response: The magnitude of this issue came to the forefront during implementation of revised vessel upgrading regulations for vessels which were concurrently issued, or eligible to renew, swordfish, shark and Atlantic tunas longline LAPs in August 2007. Prior to that time, NMFS recognized that some permit holders had failed to renew their Atlantic tunas LAP within one year of expiration, but the agency was not aware that many of these same permit holders had maintained their swordfish and shark LAPs through timely renewal. NMFS found that some permit holders had inadvertently let their Atlantic tunas longline LAP expire because they misunderstood the differences in the permit renewal process for swordfish/shark LAPs and Atlantic tunas longline LAPs (as discussed in detail in the proposed rule (73 FR 19795, April 11, 2008)). NMFS also found that some swordfish and shark permit holders were not able to renew their Atlantic tunas longline LAP because they did not possess a vessel and the tuna permitting system cannot issue a permit without vessel information. For these reasons, the agency is amending the HMS regulations to be more reflective of the operational capabilities of the Atlantic tunas longline permit issuance system and to reduce confusion regarding the renewal of this permit.

Comment 3: If I have an incidental swordfish permit and a shark permit, is NMFS going to issue me a tuna longline permit as a result of this rule?

Response: Not necessarily. This final action only amends the regulations regarding the renewal of expired Atlantic tunas longline LAPs. As a result, the most recent permit holder of record will be eligible to renew that permit even if it has been expired for more than one year. The Atlantic tunas longline LAP remains a *limited* access permit. As stated in 50 CFR 635.4(d)(4), the permit may only be obtained through transfer from current owners. This means that the concurrent possession, or issuance, of swordfish and shark directed or incidental LAPs does not automatically entitle a person to an Atlantic tunas longline LAP. It must still be obtained through permit transfer.

Comment 4: Will reissuing 40 Atlantic tunas longline LAPs create the complementary balance of permits that NMFS is hoping to achieve, or will the agency have to issue more permits? How many shark and swordfish boats are looking for Atlantic tunas longline LAPs?

Response: There are approximately 40 vessels that have been issued, or are eligible to renew, swordfish and shark permits that need an Atlantic tunas longline LAP to complete the three-permit combination that is necessary to retain swordfish (other than with handgear) or to fish for tunas with PLL gear. As of August 6, 2007, there were approximately 288 directed and incidental swordfish permits, 542 directed and incidental shark permits, and 268 Atlantic tunas longline LAPs that were issued or eligible for renewal. Of these, 245 vessels were concurrently issued, or were eligible to renew, all three permits. The availability of the Atlantic tunas longline LAP has been a limiting factor in the number of vessels that are eligible to retain swordfish or fish for tunas with PLL gear. Renewing approximately 40 Atlantic tunas longline LAPs should help to complement the available number of swordfish permits. Because most of the 40 vessels

affected by this final rule have already been issued swordfish and shark LAPs, the number of authorized PLL vessels could potentially increase from approximately 245 to 285. However, it is not known if every former permit holder will apply to renew the Atlantic tunas longline LAP, so the actual increase in the number of PLL vessels could be less.

Comment 5: How many inactive PLL vessels are there which have been issued the three necessary permits?

Response: There are about 131 vessels out of 245 vessels authorized to fish with PLL gear that did not report any landings in the HMS logbook in 2006. These 131 vessels are considered to be currently inactive in the HMS fishery.

Comment 6: I support the proposed rule and other actions to increase U.S. swordfish landings. The U.S. swordfish quota is going to be reduced at ICCAT. When the swordfish quota is reduced, it will adversely affect both recreational and commercial fishermen. There are people that cannot currently fish and contribute to catching the domestic swordfish quota because they do not possess the three necessary permits. There are many reasons why people did not renew their permits. Some people were laid up due to illness or vessel maintenance. There is no reason for these permits to be latent. They should be reissued and put back into circulation so that shark and swordfish permit holders can get back to landing product. The United States needs to have more boats on the water fishing, and the boats must have the proper permits to do that.

Response: This final rule could potentially increase the number of vessels authorized to retain swordfish, and fish for tunas with PLL gear, to a level approximately equal to the number of vessels issued a swordfish LAP. However, it is not known if every former Atlantic tunas longline permit holder affected by this rule will apply to renew the permit, so the actual increase in permit numbers and fishing vessels may be less than 40. This rule will remove an administrative barrier to renewing the Atlantic tunas longline LAP, and provide an opportunity for some current swordfish and shark permit holders to reenter the PLL fishery. If they choose not to fish, these permit holders could renew their Atlantic tunas longline LAP to complete their HMS permit package and then transfer their permits to another vessel owner. In either case, more HMS three-permit combinations could become available for use in the PLL fishery as a result of this rule.

Comment 7: The proposed action will not increase domestic swordfish landings enough to have any impact at ICCAT.

Response: This final action is not likely to immediately increase domestic swordfish landings to the level that the United States will fill its domestic swordfish quota. However, it will reduce an administrative barrier to renewing the Atlantic tunas longline LAP, and provide an opportunity for some current permit holders that are issued swordfish and shark LAPs to reenter the PLL fishery. It will help to reduce the rate of

attrition in the HMS PLL fishery by increasing the overall number of available ■complete• PLL permit packages. If all 40 vessel owners affected by this rule immediately obtain their Atlantic tunas longline LAP and begin fishing for swordfish, landings could significantly increase.

Comment 8: Why doesn't the Atlantic tunas longline LAP have a ■no vessel• status?

Response: The Atlantic tunas longline LAP does not have a ■no vessel• status because the permit issuance system was originally designed for open access permits which do not need ■no vessel• status, such as the General category tuna permit and the HMS Angling category permit. In order to renew a permit, the online system requires applicants to enter vessel information. After the permit is issued, the permit number remains associated with the vessel and its U.S. Coast Guard documentation or state registration number. This system works well for open access permits which do not have a ■sunset• requirement specifying that the permit must be renewed within one year of expiration. However, if an Atlantic tunas longline permit holder sells their vessel but legally retains the limited access permit, the permit cannot be renewed without entering vessel information. Problems with the ■sunset• requirement have arisen when a legally-retained permit was not issued to a vessel within one year of expiration. This final rule will allow Atlantic tunas longline LAPs to be retained, and later renewed, by the most recent permit holder of record even if the permit has not been issued to a vessel for more than one year. In that regard, this final rule accomplishes the same objective as providing ■no vessel• status for Atlantic tunas longline LAPs.

Comment 9: NMFS should get rid of ■no vessel• permit status. Latent permits have no effect on increasing swordfish tonnage.

Response: NMFS believes it is important for LAP holders to have the ability to retain their permit(s) without possessing a vessel. It provides flexibility to permit holders who originally qualified for an LAP and it facilitates permit transferability. There are many circumstances where a permit holder might not own a vessel, might not be able to fish, or might choose not to fish. For example their vessel may have sunk, been sold, or fishery conditions might preclude participation. Providing LAP holders with the ability to retain their permits without owning a vessel provides time for them to find a suitable replacement vessel, or time to make necessary business decisions. Nevertheless, in a future rulemaking, the Agency may consider alternatives to address latent fishing effort.

Comment 10: If a legitimate fisherman made a mistake in not renewing their Atlantic tunas longline LAP, they should be allowed to obtain a new permit. To verify this, NMFS should put a specific timeframe or qualification criteria on the 40 vessels with expired permits. In order to obtain a new permit, they must have fished within a certain period of time. If they did not fish within that timeframe, then they should not be reissued the permit. Otherwise, the proposed rule opens a Pandora's box.

Response: The establishment of restrictive qualification criteria to become eligible for newly reissued permits runs counter to the primary intent of this rulemaking, which is to help ensure that the number of available Atlantic tunas longline LAPs is sufficient to match the number of available swordfish and shark LAPs. There are restrictions associated with this final rule, however. NMFS will reissue Atlantic tunas longline LAPs that have been expired for more than one year only upon receipt of a complete permit renewal application from the most recent permit holder of record, provided that they have also been issued valid swordfish and shark LAPs and all other permit renewal requirements are met. Former permit holders must apply for the Atlantic tunas longline LAP, as NMFS will not automatically reissue the permit to all former permit holders. This action will not increase the number of PLL vessels above the number of vessels that are currently issued, or eligible to renew, swordfish directed and incidental permits. At most, approximately 40 permits could be reissued as a result of this rule but all of these permits have been issued before, since LAPs were first implemented in 1999. In a future rulemaking, the Agency may consider alternatives to address latent fishing effort.

Comment 11: I support the preferred alternative which would remove the one year renewal timeframe on Atlantic tunas longline LAPs and allow the agency to reissue this permit to the most recent permit holder of record. This would allow me to renew my permit and make my incidental swordfish permit valid again. It provides an opportunity for me to retain the incidental swordfish possession limit that may be caught while fishing for *Illex* squid. This is a significant benefit to my business and it will not have a negative impact on the swordfish stock. There are between 50 - 70 LAPs issued for *Illex* squid, and about 20 active *Illex* squid vessels. Four to five of these vessel owners would seek to renew their expired Atlantic tunas longline LAP.

Response: NMFS recognizes that some *Illex* squid trawl vessel owners indicated that they misunderstood the requirement which specifies that, in order to retain incidentally-caught swordfish, it is necessary to be issued an Atlantic tunas longline LAP, a shark LAP, and a swordfish LAP (other than handgear). This final rule will allow some squid trawl vessel owners to renew their expired Atlantic tunas longline LAP, thereby allowing them to retain incidentally-caught swordfish, reduce or eliminate regulatory swordfish discards, and obtain economic benefits.

Comment 12: NMFS should consider allowing squid trawlers to obtain an incidental swordfish LAP without requiring them to also obtain a corresponding Atlantic tunas longline LAP and a shark LAP. These vessels fish in approximately 150 - 200 fathoms on the edge of the continental shelf and rarely, if ever, catch tunas or sharks. They do not direct fishing effort on swordfish because it is unfeasible. This modification would allow only for the retention of incidentally-caught swordfish.

Response: This comment is beyond the scope of this rulemaking, however NMFS may consider the recommendation in a future rulemaking.

Comment 13: I am concerned about the language which requires that the swordfish and shark LAPs must have ■been maintained through timely renewal• in order to be eligible for a reissued Atlantic tunas longline LAP. My vessel lost its Atlantic tunas longline LAP because of non-renewal. I then transferred its swordfish and shark permits to another vessel. If the swordfish and shark permits are transferred back to the original vessel (the one that lost its tuna permit), will that vessel still be eligible for a reissued Atlantic tunas longline LAP as a result of this rule?

Response: To clarify, upon receipt of a complete permit renewal application, NMFS will reissue Atlantic tunas longline LAPs that have been expired for more than one year to the most recent permit holder of record, but only if the vessel has also been issued both a shark LAP and a swordfish LAP (other than handgear), and all other requirements for permit renewal are met. Because the shark and swordfish LAPs must already be issued, those permits would have been maintained through timely renewal. In the situation described in this comment, the vessel would be eligible for a newly reissued Atlantic tunas longline LAP if it was previously issued the tuna permit, and was currently issued both swordfish and shark LAPs, regardless of whether those swordfish and shark LAPs were transferred from another vessel.

Comment 14: NMFS should require that permit recipients have a boat as a qualification criterion before reissuing a new Atlantic tunas longline LAP. If a fisherman invests in building or buying a boat, it demonstrates their commitment to the fishery and they should be reissued the permit. This requirement would also prevent permits from being sold from one area to another area.

Response: Under this final rule the eligibility to be issued an Atlantic tunas longline LAP will not be dependent upon possessing a vessel. The most recent permit holder of record for an Atlantic tunas longline LAP will be eligible to renew that permit with no ■sunset• date. However, the permit cannot actually be reissued until the most recent permit holder of record possesses a vessel for which the permit can be issued. NMFS believes that the establishment of more restrictive qualification criteria, such as owning a vessel to become eligible for a newly reissued permit, would run counter to the intent of this rulemaking which is to ensure that the available number of Atlantic tunas longline LAPs is sufficient to match the number of available swordfish and shark LAPs.

Comment 15: NMFS should not require that newly reissued permits be linked to a vessel. Vessels can sink or be taken out of service for many reasons. Therefore, people need to have the flexibility to keep their permits separate from vessels so that the permit can be used later. Some people might not be able to get back into the fishery because they are sick or incapacitated. However, they should be allowed to keep their permit in ■no vessel• status and to sell it later so that it can actually be used to fish.

Response: As described above in the response to Comment 14, it is necessary for a person to possess a vessel in order to be issued, or reissued, an Atlantic tunas longline LAP. This is a function of the permit renewal system. However, the eligibility to be

issued an Atlantic tunas longline LAP will not be dependent upon possessing a vessel. Therefore, if a person was previously issued an Atlantic tunas longline LAP and they remain the most recent permit holder of record, they would be eligible to renew the permit with no sunset date, but the permit could not actually be issued until there is a vessel to which the permit may be issued. They would not lose their eligibility to renew their permit if they do not have a vessel, or if they become sick or incapacitated.

Comment 16: I oppose the proposed rule. The proposed regulations will allow people who didn't follow the regulations regarding permit renewals to obtain an Atlantic tunas longline LAP. Some fishermen paid a lot of money to buy that permit. The proposed rule would allow people who are reissued the permit to obtain an economic benefit. Why is NMFS rewarding these 40 individuals? This rule makes a difference to people who had to buy a permit for a lot of money. The 40 affected individuals have not been fishing. They parked their permit, and now they will be able to renew it. NMFS should be more forthright about why it is allowing these people to renew their permit if it has been expired for more than one year.

Response: NMFS is implementing this final rule primarily to ensure that an adequate number of Atlantic tunas longline LAPs are available to match the available number of swordfish and shark LAPs because all three permits are needed to retain swordfish (other than with the swordfish handgear LAP) and to fish for tunas with PLL gear. This rule is also being implemented so that the HMS regulations better reflect the operational constraints associated with the Atlantic tunas longline permit issuance system. For example, because the tuna permit issuance system lacks no vessel status, some people without a vessel were unable to renew their Atlantic tunas longline LAP within one year and they lost their eligibility for the permit. Also, some squid trawl vessel owners issued incidental swordfish permits indicated that they misunderstood the requirement which specifies that they must also be issued an Atlantic tunas longline LAP and a shark LAP in order to retain swordfish. These vessel owners inadvertently failed to renew their tuna permit within one year of expiration, lost their eligibility, and have since had to discard incidentally-caught swordfish. NMFS is aware that this rule could potentially provide an economic benefit to former permit holders who are reissued the permit. However, all of the individuals affected by this rule originally qualified for the permit, or obtained it through transfer. NMFS will not be issuing new permits to everyone who submits an application. The Atlantic tunas longline permit remains a limited access permit. Unless a person is the most recent Atlantic tunas longline permit holder of record, the permit can still only be obtained through transfer.

Comment 17: I oppose the proposed rule. It would reward individuals that have not helped the swordfish fishery at all. Their permits are being carried solely as an investment. Anyone who owns a permit knows that people are looking to buy permits. This proposed rule offers an opportunity for these individuals to sell their newly reissued permits. Many former permit holders will sell the Atlantic tunas longline LAP for economic benefit to south Florida vessel owners that want to fish with buoy gear.

Response: The final rule will allow former Atlantic tunas longline permit holders to renew this permit if it has been expired for more than one year. They will then become legally eligible to retain swordfish, provided that they have also been issued a shark and swordfish LAP (other than handgear) and are compliant with all other regulations. Because these former permit holders were previously not allowed to renew their expired Atlantic tunas longline LAPs, they were not able to retain swordfish or “help” the swordfish fishery. It is unlikely that these former permit holders allowed their Atlantic tunas longline permit to expire for more than one year if they were holding onto it for investment purposes, as the permits would no longer be renewable. Many former permit holders have indicated that they misunderstood the requirement which specifies that an Atlantic tunas longline LAP is necessary to retain swordfish (except with a swordfish handgear LAP), or that they were not able to be issued a tunas longline LAP because they did not possess a vessel, or were confused by the permit renewal procedures. Under this final rule, if a person whose Atlantic tunas longline LAP has been expired for more than one year possesses a vessel, applies for the permit, has been issued both swordfish and shark LAPs (other than swordfish handgear), and meets all other permit renewal requirements, they will be reissued a new permit. That permit could then be used to fish, or it could be sold and transferred. Transferability is an important feature of all HMS LAPs. If some of the newly reissued permits are transferred to people who are then able to fish for swordfish as a result of this final rule, it would be beneficial to the United States for achieving the domestic swordfish quota. It is possible that some transferred permits could be used to participate in the buoy gear fishery in south Florida. The buoy gear fishery is currently authorized and managed under the Consolidated HMS Fishery Management Plan (Consolidated HMS FMP). NMFS monitors, and will continue to monitor, the buoy gear fishery to determine if changes to the regulations governing this fishery are warranted.

Comment 18: The United States will not catch its swordfish quota if the newly reissued permits are not actually used to catch fish. The final rule should contain a sunset clause which specifies that if a newly reissued permit is not used to fish by a certain date, then it would be revoked. The United States needs to put boats on the water. Therefore, the recipients must either use the permit or lose the permit.

Response: NMFS is not imposing any additional restrictions, such as a use or lose date, upon newly reissued Atlantic tunas longline LAPs. The establishment of restrictive criteria to retain the permit, or to retain eligibility for the permit, would run counter to the intent of this rulemaking, which is primarily to ensure that the number of available Atlantic tunas longline LAPs is sufficient to match the number of available swordfish and shark LAPs. There are many instances when a person may not be able to fish. Requiring a person to fish with a newly reissued permit within a certain period of time, or else risk losing the permit, could compromise their safety at sea and would limit their business planning and decision-making flexibility. As stated in the responses to comments 9 and 10, NMFS may consider alternatives to address latent effort in a future rulemaking.

Comment 19: NMFS should not allow any newly reissued permits to be sold or transferred.

Response: NMFS believes that the regulations governing the sale and transfer of all HMS LAPs should be consistent for administrative purposes and to minimize confusion, especially because swordfish, shark, and Atlantic tunas longline LAPs are often transferred together as a three-permit package. It would be confusing for the public and difficult for NMFS to administer if only certain Atlantic tunas longline LAPs were transferrable, while others were not. Furthermore, permit transferability is an important feature of HMS LAPs because it allows permit buyers and sellers to determine how permits are utilized, rather than the federal government. Finally, the establishment of restrictive criteria applying only to the transfer of certain Atlantic tunas longline LAPs would run counter to the intent of this rulemaking, which is primarily to ensure that the number of available Atlantic tunas longline LAPs is sufficient to match the number of available swordfish and shark LAPs.

Comment 20: NMFS should create a pool of unused or revoked permits that could be issued to people who want to fish. There needs to be more HMS permits available so that people who want to buy a boat and fish can more easily obtain a permit.

Response: NMFS does not currently intend to revoke latent HMS LAPs, or to serve as a broker for revoked or latent permits. As discussed in the response to Comment 5, there are currently a large number of latent or inactive permits in the HMS PLL fishery. All of these permits are transferrable, so NMFS encourages anyone interested in participating in an HMS limited access fishery to make the appropriate contacts and obtain the needed permits.

Comment 21: NMFS should allow for the leasing and chartering of HMS permits to foreign vessels. This would allow the newly reissued Atlantic tunas longline LAPs permits to be used for fishing on the high seas.

Response: This comment is beyond the scope of this rulemaking, however NMFS may consider the recommendation in a future rulemaking.

Comment 22: I support the proposed action, but it should only be considered a first step. Is this the entire extent of the permit revisions that NMFS is considering? NMFS should allow all lapsed swordfish, shark, and tuna permits to be reinstated. The United States needs more boats on the water catching fish. Many people lost their permits either through attrition, or because they were confused by the renewal process. NMFS should address the entire issue by reissuing all expired shark and swordfish permits. Does NMFS plan to reinstate other lapsed HMS permits?

Response: NMFS does not presently intend to reinstate other lapsed HMS permits. This final rule only affects lapsed Atlantic tunas longline LAPs because the situation regarding these permits is unique. The operational constraints of the online renewal system for this permit prevented some otherwise qualified permit holders from renewing their permit because they did not own a vessel. Also, several squid trawl vessel owners indicated that they misunderstood they needed an Atlantic tunas longline LAP and a shark LAP to retain incidentally-caught swordfish, even though they were issued an incidental swordfish permit. Finally, the renewal reminder and permit application process for Atlantic tunas longline LAPs is different from other HMS LAPs. NMFS recognizes these differences and realizes that some former permit holders may not have been able to renew their permit, or were confused by the regulations or renewal process. This final rule provides an immediate remedy to these readily identifiable problems. NMFS may also consider other, more comprehensive, permit-related issues in a future rulemaking.

Comment 23: I oppose the proposed action. There are already enough HMS permits available now.

Response: There are many latent HMS permits, including approximately 131 complete three-permit PLL packages. However, some people are issued only one or two of the three required permits needed to retain swordfish (other than with handgear), or to fish for tunas with PLL gear. If these people were to complete their three-permit package by obtaining an Atlantic tunas longline LAP through transfer, the transferor could then have an incomplete permit package. This is the permit imbalance that NMFS is seeking to address. This final rule is less focused on simply reissuing more Atlantic tunas longline LAPs, and more focused on ensuring that currently issued swordfish permits are valid (because they are held in conjunction with the other two permits). It will help to slow the rate of attrition in the PLL fishery without increasing the number of PLL vessels above the number of permit holders issued swordfish LAPs.

Shark Dealer Workshops

Comment 24: Are shark dealer permits issued to individuals or to entities?

Response: Shark dealer permits may be issued to both individuals and corporate entities.

Comment 25: Does the final rule change the HMS regulations at • 635.28(b)(3) which state that, when the fishery for a shark species group in a particular region is closed, shark dealers in that region may not purchase or receive sharks of that species group from a vessel issued an Atlantic shark LAP?

Response: No. This final rule primarily modifies Atlantic Shark Identification Workshop requirements at • 635.8(b) for Atlantic shark dealers that have more than one place of business listed on their shark dealer permit. Also, this final rule implements a requirement which specifies that trucks and other conveyances are considered to be extensions of a dealer's place of business and must possess a copy of a valid Atlantic Shark Identification Workshop certificate (dealer or proxy) issued to a place of business covered by the dealer permit.

Comment 26: The Atlantic Shark Identification Workshops use shark ■logs• and the second dorsal and anal fins to identify sharks. NMFS should allow the workshop instructor to have access to prohibited species, different life history stages, and different product forms to further improve dealer identification skills.

Response: NMFS will examine the feasibility and necessity of providing these items at future workshops.